

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BUCKS COUNTY DEPARTMENT OF	:	
MENTAL HEALTH/MENTAL	:	CIVIL ACTION
RETARDATION,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
BARBARA DE MORA,	:	
Defendant.	:	No. 01-3254

MEMORANDUM AND ORDER

SCHILLER, J.

December , 2002

I. INTRODUCTION

This case arises under Part C of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1431 *et seq.*, which governs the provision of “early intervention services” to developmentally-challenged infants and toddlers. In a Memorandum and Order dated October 4, 2002, I found that Barbara de Mora was entitled to reimbursement for early intervention services she personally provided to her daughter, I.D.¹ Contending that she was a prevailing party, Ms. de Mora moved for attorneys’ fees. The Bucks County Office of Mental Health and Mental Retardation (“Bucks County”) responded by arguing that there is no statutory authority for awarding Ms. de Mora attorneys’ fees. For the reasons set forth below, I deny Ms. de Mora’s motion.

¹ The parties agreed upon the designation “I.D.”

II. DISCUSSION

The IDEA consists of multiple subsections. A number of cases have addressed awards of attorneys' fees under Part B of the IDEA,² which affords federal financial assistance to state and local education agencies for the education of disabled students. *See, e.g., Woodside v. Sch. Dist. of Phila. Bd. of Educ.*, 248 F.3d 129 (3d Cir. 2001) (holding attorney-parents could not recover fees for representing own children in IDEA case seeking educational services at school for disabled child). Although it is well established that a party may recover counsel fees under Part B of the IDEA, *see, e.g., Daniel S. v. Scranton School District*, 230 F.3d 90, 95 (3d Cir. 2000), Ms. de Mora's case arises under Part C of the IDEA, and there is scant precedent on the issue of whether a party who prevails under Part C can recover attorneys' fees.³

As a general matter, under the "American rule," each party is required to pay its own attorneys' fees. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975). Similarly, the Supreme Court has "established that attorney's fees generally are not a recoverable cost of litigation absent explicit congressional authorization." *Key Tronic Corp. v. United States*, 511 U.S. 809, 815 (1994) (internal quotation omitted). With respect to the IDEA, both Congress and the

² Part B of the IDEA, 20 U.S.C. §§ 1411-1427, is entitled "Assistance for Education of All Children with Disabilities"; Part C, 20 U.S.C. §§ 1431-1445, is entitled "Infants and Toddlers with Disabilities." Part A, 20 U.S.C. §§ 1400-1409, and Part D, 20 U.S.C. §§ 1451-1456, are respectively entitled "General Provisions" and "National Activities to Improve Education of Children with Disabilities."

³ Of the cases cited by the parties, the one most directly on point appears to be an opinion from the Director of New York State's Office of Special Education Programs, *Letter to Kemmer*, 18 IDELR 624 (date not provided). Ms. de Mora concedes this authority does not provide support for her motion.

Supreme Court have spoken on the issue of the availability of attorneys' fees. In *Smith v. Robinson*, the Supreme Court found that a provision for an award of attorneys' fees was absent from the IDEA's predecessor, the Education of the Handicapped Act ("EHA"), and affirmed the denial of attorneys' fees to plaintiffs who had successfully brought suit to secure their right to "a free appropriate public education." 468 U.S. 992, 1020. In response to *Smith*, Congress amended the EHA, *inter alia*, by adding a provision authorizing an award of attorneys' fees to certain prevailing parties in actions to secure the right to a free appropriate public education. See The Handicapped Children's Protection Act of 1986, PUB.L. NO. 99-372 § 3, 100 STAT. 796 (1986).

In particular, the statute, as amended, provides: "in any action or proceeding brought *under this section*, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party." 20 U.S.C. § 1415(i)(3)(B)(2002). That is, by its express terms, § 1415 does not apply to all provisions of the IDEA, but instead it is limited to the provision of free appropriate public education. See, e.g., 20 U.S.C. § 1415(a), (b)(1). The instant controversy arises under Part C of the IDEA, and, therefore, is not governed by § 1415. As stated in my previous Memorandum, the authority for the award of reimbursement to Ms. de Mora for the early intervention services she provided to I.D. is 20 U.S.C. § 1439, Part C's counterpart to § 1415. Although § 1439 affords many of the same procedural protections as § 1415, the former simply does not authorize an award of counsel fees. Absent statutory authorization, I am precluded from awarding Ms. de Mora counsel fees. See *Alyeska*, 421 U.S. at 260 (Congress has not "extended any roving authority to the Judiciary to allow counsel fees as costs or otherwise whenever the courts might deem them warranted.")

As Ms. de Mora argues, there are troubling public policy ramifications that flow from denying counsel fees to a litigant in her position. Nevertheless, constrained by the law, I am unable to award Ms. de Mora attorneys' fees. Until such time as the law is amended, Ms. de Mora, and her counsel, can take some consolation in the result they achieved on the merits.⁴

III. CONCLUSION

Accordingly, I find that there is no statutory authority for an award of attorneys' fees under Part C of the IDEA and deny Ms. de Mora's motion. An appropriate Order follows.

⁴ In this regard, it is noteworthy that 20 U.S.C. § 1439 sets forth "minimum procedural safeguards," suggesting that applicable state law may be amended to include a right to attorneys' fees in appropriate cases.

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BARBARA DE MORA,	:	
Defendant.	:	No. 01-3254

ORDER

AND NOW, this day of **December, 2002**, upon consideration of Defendant Barbara de Mora's Motion to Fix Statutory Attorneys' Fees, the response thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

Defendant Barbara de Mora's Motion to Fix Statutory Attorneys' Fees (Document No. 28) is **DENIED**.

BY THE COURT:

Berle M. Schiller, J.